

D.T.E. 01-42

Investigation by the Department of Telecommunications and Energy on its own motion as to the propriety of rates and charges as set forth in tariffs: M.D.T.E. Nos. 1 and 2, filed by Pinehills Water Company on April 13, 2001 to become effective May 1, 2001 and suspended until November 1, 2001 for further investigation.

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APPEARANCES: Eric J. Krathwohl, Esq.  
Emmet E. Lyne, Esq.  
Rich, May, Bilodeau & Flaherty, P.C.  
176 Federal Street  
Boston, Massachusetts 02110-2223  
FOR: PINEHILLS WATER COMPANY  
Petitioner

## I. INTRODUCTION

On April 13, 2001, Pinehills Water Company (“Pinehills” or “Company”), pursuant to G.L. c. 164, § 94 and G.L. c.165, § 2, filed with the Department of Telecommunications and Energy (“Department”) initial rates and charges proposed to become effective May 1, 2001. Pinehills is a newly-created water utility intended to serve approximately 2,800 residential customers and approximately 1,300,000 square feet of general commercial and retail space in The Pinehills Community, a mixed-use development in the town of Plymouth, Massachusetts being developed by Pinehills, LLC. The petition was docketed as D.T.E. 01-42. The proposed rates were suspended until November 1, 2001 for further investigation.

The Department conducted a public hearing in Plymouth on June 16, 2001 to afford interested persons an opportunity to be heard. No customers or members of the public attended the hearing. On that same day, representatives of the Department and Pinehills conducted a site visit of the Company’s facilities.

## II. INTERIM RATE REQUEST

On June 28, 2001, Pinehills filed a petition requesting authority to charge interim rates pending the Department’s decision in this proceeding (“Petition for Interim Rates”). The Company’s proposed interim rates provide for service charges ranging between \$30 per quarter and \$2,400 per quarter, with a volumetric rate of \$4.00 per thousand gallons (Petition for Interim Rates, Att. B, Interim M.D.T.E. No. 2-I at 1). The Company’s proposed ancillary charges, including fire protection service, connection charges, and miscellaneous fees are equal to 75 percent of its proposed initial charges (*id.* at 3, Interim M.D.T.E. No. 1-I at 11-12).

In support of its request, the Company states that it is presently supplying water at no charge to Pinehills LLC's administrative and sales offices, a model home sales office, a design center, a golf course and related facilities, a sewer treatment facility, landscape irrigation, and a few residences (id., Att. A). The Company maintains that interim rates are necessary because customer growth and ongoing construction make it necessary to prevent current users, particularly builders, a "free ride" at the expense of future customers, and to prevent customer confusion over future charges for water service (id. at 4-5). Moreover, Pinehills contends that the establishment of interim rates is necessary to comply with a directive of the Department of Environmental Protection that water system operations be fully funded by water system revenues (id. citing June 16, 1999 Water Withdrawal Permit, Tab D of April 13, 2001 filing).

Pinehills proposes the use of customer charges, fire protection charges, and ancillary charges equal to 75 percent of its initially-proposed charges, and a volumetric rate equal to 50 percent of its initially-proposed volumetric rate (Petition for Interim Rates at 3, Att. B). The Company argues that the higher percentage proposed for interim non-volumetric rates is intended to: (1) more closely match the level of interim rates with Pinehills' projection of the permanent rates to be granted by the Department; (2) more closely correspond with the level of non-volumetric rates and charges of other Massachusetts water utilities; and (3) provide a sufficient margin between volumetric-based and non-volumetric-based rates to reduce the possibility of overcollecting on the Company's interim rates (Response to Information Request DTE 1-24).

The Company requests that any approved interim rates charges be subject to refund if the Department determines in its final order that the appropriate charges are less than those being sought as part of Pinehills' request for interim rates (id. at 3). The Company represents that, considering the limited number of customers during the anticipated term of this proceeding, that refunds to individual customers would be easy to administer (id.). The Company argues that the Department's precedent allows interim rates for newly-created water systems (id. at 5-6, citing Pond Properties, Inc., D.P.U. 90-91 (1990), Glacial Lake Charles Aquifer Water Company, D.P.U. 88-197, Interim Order (1988)).

### III. ANALYSIS AND FINDINGS

Pinehills is presently supplying water to a number of customers without charge (Petition for Interim Relief, Att. A). While the Company represents that it has significant financial backing from its owners, it would be contrary to public policy to require Pinehills to continue providing service without compensation. Additionally, the creation of an interim pricing structure would provide both contractors involved in the development of The Pinehills Community and ultimate customers with price signals relative to their consumption. Although the Department's investigation in this proceeding has not yet been completed, the Company's proposal to refund to customers the excess of any rates that are found to be greater than those approved by the Department's final order ensures that customers will not be harmed by the granting of interim rates. See Pond Properties, Inc., D.P.U. 90-91, Interim Order at 2 (1990); Glacial Lake Charles Aquifer Water Company, D.P.U. 88-197, Interim Order at 1-2 (1988).

Accordingly, the Department finds that some level of interim rates for the Company, subject to refund, is appropriate.

Concerning the appropriate level of interim rates, Pinehills has proposed the use of differing percentages for volumetric charges and non-volumetric charges. While the Department has previously granted interim rates equal to 50 percent of proposed permanent rates on an across-the-board basis, this practice is based more on convention than on the particular utility's cost characteristics. Moreover, as a newly-created water system, a significant portion of Pinehills' present operating expenses are of a fixed nature, which do not vary with consumption. See D.P.U. 88-197, at 5-6 (1989). Considering the Company's present cost causation patterns, the fixed charges and fees for other Massachusetts water companies, and the desire to reduce the possibility of an overcollection by the Company, the Department finds that the proposed differential between the Company's proposed volumetric and non-volumetric rates represents a reasonable cost allocation approach pending a final Department decision in this proceeding. Therefore, the Department approves Pinehill's proposed use of an interim volumetric rate equal to 50 percent of the Company's proposed permanent volumetric rates, and interim non-volumetric rates equal to 75 percent of the Company's proposed permanent non-volumetric rates.

#### IV. ORDER

Accordingly, after due consideration, it is

ORDERED: That the rates and charges set forth in M.D.T.E. Nos. 1-I and 2-I, filed with the Department on June 28, 2001 by Pinehills Water Company are APPROVED; and it is

FURTHER ORDERED: That the new rates shall apply to water consumed on or after the date of this Order, and are subject to refund if such rates are in excess of the final rates to be established by the Department in this investigation.

By Order of the Department,

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James Connelly, Chairman

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

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Eugene J. Sullivan, Jr. Commissioner

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Deirdre K. Manning, Commissioner

Appeals as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).